

PREVENTION OF TELEMARKETING FRAUD

6-1-301. Legislative Declaration. The general assembly hereby finds, determines, and declares that the use of telephones for commercial solicitation is rapidly increasing; that this form of communication offers unique benefits, but entails special risks and poses the potential for abuse; that the general assembly finds that the widespread practice of fraudulent and deceptive commercial telephone solicitation has caused substantial financial losses to thousands of consumers, and, particularly, elderly, homebound, and otherwise vulnerable consumers, and is a matter vitally affecting the public interest; and, therefore, that the general welfare of the public and the protection of the integrity of the telemarketing industry requires statutory regulation of the commercial use of telephones.

6-1-302. Definitions. As used in this part 3, unless the context otherwise requires:

- (1) "Commercial telephone seller" or "seller" means a person who, in the course of such person's business, vocation, or occupation, on the person's own behalf or on behalf of another person, causes or attempts to cause a commercial telephone solicitation to be made; except that "commercial telephone seller" or "seller" does not include the following:
 - (a) A person offering or selling a security as defined in section 11-51-201(17), C.R.S., if:
 - (I) The security is either registered with the securities commissioner under section 11-51-303 or 11-51-304, C.R.S., exempt from registration under section 11-51-307, C.R.S., or the transaction in the security is exempt under section 11-51-308, C.R.S.; and
 - (II) The person is licensed by the securities commissioner as a broker-dealer as defined in section 11-51-201 (2), C.R.S., unless expressly excluded from such definition, or as a sales representative as defined in section 11-51-201 (14), C.R.S., unless expressly excluded from such definition, or such person is exempted from licensing under section 11-51-402, C.R.S.;
 - (b) (I) A person soliciting the sale of any newspaper, magazine, or other periodical of general circulation if such sales constitute a majority of such person's business and business revenues; or
 - (II) A person soliciting the sale of any book, record, audio tape, compact disc, or video if the person allows the purchaser to review the merchandise without obligation for at least seven days and provides a full refund for the return of undamaged merchandise within thirty days or if the person solicits such sale on behalf of a membership club operating in conformity with 16 C.F.R. 425;
- (c) A person making telephone calls to a residential customer for the sole purpose of polling or soliciting the expression of ideas, opinions, or votes, or a person soliciting solely for a political or religious cause or purpose;
- (d) A paid solicitor or charitable organization that is required to and has complied with the registration, notice, and filing requirements of sections 6-16-104.6 and 6-16-104, respectively, or a person who is excluded from such notice and reporting requirements by section 6-16-103(7);
- (e) A supervised financial organization, as defined in section 5-1-301(45), C.R.S., and its employees, when acting within the scope of their employment;
- (f) A supervised lender, as defined in section 5-1-301(46), C.R.S., and its employees, when acting within the scope of their employment;

- (g) A person selling insurance, as defined in section 10-1-102(12), C.R.S., in compliance with the requirements of title 10, C.R.S.;
- (h) A person soliciting without the intent to complete and who does not in fact complete the sales transaction during the telephone solicitation or another telephone solicitation and who only completes the sales transaction at a later face-to-face meeting between the solicitor and the prospective purchaser, excluding a face-to-face meeting, the sole purpose of which is to collect the payment or deliver any item purchased, or a person soliciting a purchaser with whom the person has had a previous face-to-face meeting in the course of such person's business;
- (i) Any governmental entity or employee thereof, acting in the employee's official capacity;
- (j) A person soliciting telephone service, or licensed or franchised cable television service, which is billed and paid on a daily, weekly, or monthly basis and which can be canceled at any time without further obligation to the purchaser;
- (k) A person or an affiliate of a person whose business is regulated by the public utilities commission;
- (l) A person or an affiliate of a person whose business is regulated by the real estate commission;
- (m) A person whose conduct is within the exclusive jurisdiction of the federal commodity futures trading commission as granted under the federal "Commodity Exchange Act", as amended;
- (n) A seller of food for immediate consumption when the sale to one purchaser does not exceed three hundred dollars;
- (o) A person who initially contacts the purchaser with a retail sales catalog requesting a telephone call response, when the person allows the purchaser to review the merchandise without obligation for at least seven days and provides a full refund for the return of undamaged merchandise within thirty days after receipt of the returned merchandise;
- (p) An issuer or a subsidiary of an issuer that has a class of securities which is subject to section 12 of the federal "Securities Exchange Act of 1934", 15 U.S.C. sec. 781, and which is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g) (2) of that section;
- (q) A person who has been operating for at least three years a retail business establishment in Colorado under the same name as that used in connection with the solicitation of sales by telephone if, on a continuing basis, the majority of the seller's business involves the purchaser receiving the seller's goods and services at the seller's business location;
- (r) A person who has conducted business for at least three years under the same name and in the same state and offers potential purchasers satisfaction guaranteed by the sending of the product or providing the service and the purchaser has an unqualified right to review and return or cancel for at least thirty days;
- (s) Any telephone marketing service company which provides telemarketing sales services under written contract to sellers and has been operating continuously for at least five years under the same business name and seventy-five percent or more of its services are performed on behalf of sellers exempt from this section. Nothing in this paragraph (s) shall be construed to exempt any seller that contracts with a telephone marketing service company for telemarketing sales services from the requirements set forth in section 6-1-303 or from the prohibitions set forth in section 6-1-304.

(t) A person soliciting business solely from business purchasers who have previously purchased identical or similar goods or services from the business enterprise on whose behalf the person is calling.

(2) "Commercial telephone solicitation" means:

(a) Unsolicited telephone calls to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine with or without a recorded message device, for the purpose of inducing the person to purchase or invest in goods, services, or property or offering an extension of credit; or

(b) Any other communication by a commercial telephone seller in which:

(I) A gift, award, or prize is offered and a telephone call response from the intended purchaser is invited; or

(II) A loan, credit card, or other extension of credit is offered to a purchaser who has not previously purchased from the person initiating the communication, and a telephone call response from the intended purchaser is invited; or

(III) A sale is to be completed or an agreement to purchase is to be entered into during the course of the telephone call response; or

(c) Any other communication by a commercial telephone seller which includes representations about the price, quality, or availability of goods, services, or property and which invites a response by telephone, including pay-per-call service calls, or which is followed by a telephone call to the intended purchaser by a salesperson.

(3) "Pay-per-call" means the use of a telephone number with a 900 prefix or any other prefix under which liability for the service or product provided attaches to the telephone bill of the individual calling such number.

(4) "Principal" means an owner, an officer of a corporation, a general partner of a partnership, the sole proprietor of a sole proprietorship, a trustee of a trust, or any other individual with similar supervisory functions with respect to any person.

(5) "Purchaser" means a person who receives or responds to a commercial telephone solicitation.

(6) "Salesperson" means any person employed or authorized by a commercial telephone seller to cause or attempt to cause a commercial telephone solicitation to be made.

(7) "Telephone sales transaction" means any payment of money by a purchaser in exchange for the promise of goods, services, property, or an extension of credit by a commercial telephone seller and includes all communications which precede such payment of money.

6-1-303. Registration of commercial telephone sellers. (1) No commercial telephone seller shall conduct business in this state without having registered with the attorney general at least ten days prior to the conduct of such business. Individual employees of the commercial telephone seller are not required to register. A commercial telephone seller conducts business in this state if the telephone solicitations of prospective purchasers are made from locations in this state or solicitation is made of prospective purchasers located in this state.

(2) A registration shall be effective for one year after the date of filing with the attorney general. Each application for registration or renewal thereof shall be accompanied by a filing fee, determined and collected by the attorney general, but such filing fee shall not exceed two

hundred fifty dollars for an application for registration or one hundred dollars for an application for renewal.

(3) Whenever, prior to expiration of a commercial telephone seller's annual registration, there is a material change in the information required by subsection (5) of this section, the seller shall, within ten days, file an addendum updating the information with the attorney general.

(4) Each application for registration shall be in writing and shall contain such information regarding the conduct of the commercial telephone seller's business and the personnel conducting the business as is required by law. The application shall be submitted on a form provided by the attorney general and shall be verified by a declaration signed by each principal of the commercial telephone seller under penalty of perjury. The declaration shall specify the date and location of signing. The information submitted pursuant to this section shall be available for public inspection.

(5) Each application for registration or renewal pursuant to this section shall contain the following information:

(a) The name or names of the commercial telephone seller, including all names under which the commercial telephone seller is doing or intends to do business, if different from the name of the seller, and the name of any parent or affiliated organization;

(b) The seller's business form and the date and place of organization;

(c) The complete street addresses of all locations from which the commercial telephone seller is or will be conducting business, including a designation of the seller's principal business location;

(d) A listing of all telephone numbers, including pay-per-call numbers, to be used by the commercial telephone seller;

(e) The name, residential address, and position held by each principal of the commercial telephone seller and the names, residential addresses, and positions of those persons who have management responsibilities in connection with the commercial telephone seller's business activities;

(f) A description of the goods, services, property, or extension of credit the commercial telephone seller is offering for sale and a copy of all sales scripts the commercial telephone seller requires salespersons to use when soliciting prospective purchasers, or, if no sales script is required to be used, a description of the sales presentation;

(g) All rules, regulations, terms, restrictions, and conditions to receiving any prize, bonus, award, gift, or premium, if applicable, including a description of each prize, bonus, award, gift, or premium, and the actual or approximate odds of a purchaser's receiving such prize, bonus, award, gift, or premium;

(h) A copy or representative sample of all written materials the seller sends to any purchaser;

(i) Such additional information regarding the conduct of the commercial telephone seller's business and the personnel conducting the business as may reasonably be required by the attorney general.

6-1-304. Unlawful telemarketing practices. (1) A commercial telephone seller engages in an unlawful telemarketing practice when, in the course of any commercial telephone solicitation, the seller:

(a) Conducts business as a commercial telephone seller without having registered with the attorney general, as required by section 6-1-303;

(b) Fails to allow the purchaser in any telephone sales transaction to cancel any purchase or agreement to purchase goods, services, or property at any time before the expiration of three business days after the purchaser's receipt of such goods, services, or property by delivering or mailing to the commercial telephone seller written notice of cancellation. Notice of cancellation, if sent by mail, is deemed to be given as of the date the mailed notice was postmarked.

(c) Fails to refund all payments made by any purchaser in any telephone sales transaction within thirty days after the commercial telephone seller receives notice of cancellation from the purchaser; except that:

(I) If the purchaser has received goods or property from the commercial telephone seller, other than an item represented as free, the commercial telephone seller shall refund all payments made by the purchaser within thirty days after the commercial telephone seller's receipt of the returned goods or property;

(II) If the purchaser has received services, including those received during the course of a pay-per-call service call, which services cannot, by their nature, be returned, the commercial telephone seller is not required to refund payments to the purchaser;

(d) Fails to disclose to the purchaser during a telephone solicitation that the purchaser has the cancellation rights set forth in paragraph (b) of this subsection (1);

(e) Misrepresents to any person that the person has won a contest, sweepstakes, or drawing, or that the person will receive free goods, services, or property;

(f) Represents that the seller's goods, services, or property are "free" if the commercial telephone seller charges or collects a fee from the purchaser in exchange for providing or delivering such goods, services, or property;

(g) Makes any reference to the commercial telephone seller's compliance with this article to any purchaser without also disclosing that compliance with this article does not constitute approval by any governmental agency of the seller's marketing, advertisements, promotions, goods, or services;

(h) Engages in any deceptive trade practice defined in section 6-1-105 or part 7 of this article.

(2) Paragraphs (b) and (d) of subsection (1) of this section do not apply to a transaction in which the consumer obtains a full refund for the return of undamaged or unused goods or a cancellation of services by giving notice to the seller within seven days after receipt by the consumer and the seller processes the refund or cancellation within thirty days after receipt of the returned merchandise or the consumer's request for refund for services not performed or a pro rata refund for any services not yet performed for the consumer. The availability and terms of the return and refund privilege shall be disclosed to the consumer orally by telephone and in writing with any advertising or promotional material or with the delivery of the product or service. If a seller offers consumers an unconditional guarantee, a clear disclosure of such guarantee by using the words "satisfaction guaranteed", "free inspection", or "no-risk guarantee" satisfy the disclosure requirements of this subsection (2).

(3) The unlawful telemarketing practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other civil and criminal statutes of this state.

(4) (a) On or after September 1, 2005, a person commits an unlawful telemarketing practice if the person knowingly:

- (I) Lists a cellular telephone number in a directory for a commercial purpose unless the person whose number has been listed has given affirmative consent, through written, oral, or electronic means, to such listing; or
 - (II) Uses a scanning device or other electronic means to identify a cellular telephone number and to make a commercial telephone solicitation to a cellular telephone.
- (b) This subsection (4) shall not apply to a commercial telephone solicitation that is in relation to a preexisting commercial relationship between the person and the person who owns the cellular telephone.

6-1-305. Penalties. (1) In addition to the remedies available under sections 6-1-110, 6-1-112, and 6-1-113:

- (a) Any person who, after receiving written notice of noncompliance from the attorney general or a district attorney, conducts business as a commercial telephone seller without having registered with the attorney general as required by section 6-1-303 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.;
- (b) Any commercial telephone seller who knowingly engages in any unlawful telemarketing practice as defined in section 6-1-304(1) (b) to (1) (h) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.
- (c) A person who engages in any unlawful telemarketing practice as defined in section 6-1-304(4) shall be liable in a private civil action to the owner of the cellular telephone for consequential damages, court costs, attorney fees, and a penalty in the amount of at least three hundred dollars and not more than five hundred dollars for a first offense and at least five hundred dollars and not more than one thousand dollars for a second or subsequent offense.

6-1-306. Repeal. (Repealed)